BAILMENTS—SPECIAL CONTRACT—LIABILITY OF BAILEE.—The defendant rented a barge from the plaintiff, under a contract stipulating that it should be redelivered in as good condition as received, ordinary wear and tear excepted. The barge was sunk without negligence on the defendant's part; and, after several months, was raised and returned in good condition. The plaintiff sought to recover rent for the time during which the barge was out of his possession. *Held,* the defendant is liable. *Cook* v. *Foreman Derrickson Veneer Co.* (N. C.), 86 S. E. 289.

It is universally acknowledged that parties can make special bailment contracts changing the liability imposed by law, provided that such contracts do not contravene a positive rule of public policy. *Grady* v. *Schweinler,* 16 N. D. 452, 113 N. W. 1031, 14 L. R. A. (N. S.) 1089, 125 Am. St. Rep. 674, 15 Ann. Cas. 161. But the bailee will never be presumed to become an insurer; and the contract must clearly show such an intent before he will be held to answer absolutely for the loss of goods, regardless of the cause of loss. *Ames* v. *Belden,* 17 Barb. (N. Y.) 513; *McEvers* v. *Steamboat Sagamon,* 22 Mo. 187. As a general rule a promise to return the goods "in as good condition as received" does not enlarge the liability implied at law, and does not make the bailee liable as an insurer. *Sawyer* v. *Wilkinson,* 166 N. C. 497, 82 S. E. 840, L. R. A. 1915B, 295; *Seevers* v. *Gabel,* 94 Iowa 75, 62 N. W. 669, 58 Am. St. Rep. 381, 27 L. R. A. 733; *St. Paul, etc., R. R. Co.* v. *Minneapolis, etc., Ry. Co.,* 26 Minn. 243, 2 N. W. 700, 37 Am. Rep. 404. While, where the bailee promises to "return in good condition or pay," he is liable as an insurer, and no proof of negligence is necessary to fix his liability. *Rapid Safety Fire Extinguisher Co.* v. *Hay-Budden Mfg. Co.,* 37 Misc. 556, 75 N. Y. Supp. 1008; *Grady* v. *Schweinler, supra.* For here there is an express provision for liability in event the article itself is destroyed, while, where the contract provides for a return in good condition merely, there is an implied condition of its continued existence. See *Rapid Safety Fire Extinguisher Co.* v. *Hay-Budden Mfg. Co., supra.*

There are not many recorded cases in which the bailor seeks to recover rent for goods destroyed or rendered unfit for use before the expiration of the bailment. However, such recovery seems dependent upon the determination of the question of which party caused the destruction or injury. Where it occurs without the fault of either, rent is apportioned *pro tanto. Willseys* v. *Hughes,* 37 Ga. 361; *Bacot* v. *Parnell,* 2 Bailey (S. C.) 424; *George* v. *Elliot,* 12 Va. 5. If the bailee is deprived of the use of the goods through some fault of his own, he is liable for the stipulated amount. *Hartford* v. *Jackson,* 11 N. H. 145; *Gleason* v. *Smith,* 39 Hun. (N. Y.) 617. Where the goods were actually destroyed through the bailee's negligence, however, it is held that he is liable only *pro tanto,* since the bailor has a right of action against him for the destruction of the goods. *Muldrow* v. *Wellington & Manchester R. R. Co.,* 13 Rich. (S. C.) 69. The usual case where the bailor is at fault for interference with the bailed property, seems to be where he wrongfully takes possession of it before the expiration of the bailment term, in which case the bailee can recover in trover. *Hichok* v. *Buck,* 22 Vt. 149. On principle, it would seem

that the bailee should be liable for such use as he has received, with a counterclaim for any damages he might have suffered from the wrongful taking. However, it is held that such a contract is entire; and upon breach by the bailor, he forfeits his rights to the whole rent. *Harris* v. *Maury,* 30 Ala. 679.

CARRIERS—SHIPPING CONTRACT—WAIVER.—The provisions of a shipping contract provided for the filing of a certain form of notice, within a definite time, in case the consignment was damaged. On the damage of the shipment the consignor filed a defective notice, to which the carrier did not object. *Held,* the carrier waived notice by the contract form. *St. Louis I. M. & S. R. Co.* v. *Laser Grain Co.* (Ark.), 179 S. W. 189. See 2 VA. L. REV. 68.

CONSTITUTIONAL LAW—PARDONS—SUSPENSION OF SENTENCE.—A statute authorized a court, at its discretion, to suspend any sentence imposed upon persons convicted of felony, on such conditions as it may deem proper. *Held,* such a statute is not an encroachment upon the constitutional power of the executive to grant pardons and reprieves. *Ex parte Bates* (N. M.), 151 Pac. 698.

The power of a court to suspend the imposition of a sentence temporarily to afford time for motions for new trials, appeals, or for any good cause has never been doubted; and it is generally recognized that the power of the court also extends to the temporary suspension of the execution of the sentence. See *United States* v. *Wilson,* 46 Fed. 748; *People* v. *Brown,* 54 Mich. 15, 19 N. W. 571; 4 BL. COMM. 394.

The power of a court to suspend sentence indefinitely has been considered by some state authorities as inherent in the courts at common law. See *People* v. *Court of Sessions,* 141 N. Y. 288, 36 N. E. 386, 23 L. R. A. 856; *Com.* v. *Dowdican's Bail,* 115 Mass. 133; *State* v. *Addy,* 43 N. J. L. 113, 39 Am. Rep. 547. Either guided by the conclusion that the power to suspend sentence indefinitely never existed in the courts and is therefore an unwarranted exercise of executive authority, or that if this power did exist at common law, it is taken away by the exclusive constitutional grant to the executive of the power of pardon and reprieve, a number of courts have adopted the contrary view, holding that the exercise of such authority by the judiciary is unconstitutional and all acts performed under it are void. *United States* v. *Wilson, supra; People* v. *Barrett,* 202 Ill. 287, 67 N. E. 23, 95 Am. St. Rep. 230, 63 L. R. A. 82; *Neal* v. *State,* 104 Ga. 509, 30 S. E. 858, 42 L. R. A. 190; *State* v. *Abbott,* 87 S. C. 466, 70 S. E. 6, 33 L. R. A. (N. S.) 112, 23 Ann. Cas. 1189. It is explained by some authorities that such a power did exist under the old common law, when there was no right of appeal and which was necessary to the preservation of justice, but since the reason for the rule never existed in this country no such power could be claimed by the courts. See *Spencer* v. *State,* 125 Tenn. 64, 140 S. W. 597; *Snodgrass* v. *State* (Tex. Crim. App.), 150 S. W. 162, 41 L. R. A. (N. S.) 1144. Arbitrary reprieves, granted by the judges in cases of necessity, seem to have been recognized under the old common law by usage rather than by strict right. See 4 BL. COMM. 394.